

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

HACHETTE BOOK GROUP, INC.,
HARPERCOLLINS PUBLISHERS LLC,
JOHN WILEY & SONS, INC., and PENGUIN
RANDOM HOUSE LLC,

Plaintiffs,

v.

INTERNET ARCHIVE and DOES 1 through
5, inclusive,

Defendants.

Case No. 1:20-CV-04160-JGK

**MEMORANDUM OF LAW IN SUPPORT OF MOTION ON CONSENT
FOR LEAVE TO FILE AMICI CURIAE BRIEF**

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Amici Curiae, The Authors Guild, Inc., Western Writers of America, Canadian Authors Association, American Photographic Artists, The Writers' Union of Canada, International Authors Forum, American Society of Media Photographers, Romance Writers of America, Society of Children's Book Writers and Illustrators, European Writers Council, National Writers Union, Graphic Artists Guild, American Society for Collective Rights Licensing, Society of Authors, Sisters in Crime, International Federation of Journalists, Dramatists Guild of America, National Press Photographers Association, Novelists Inc., Association of Authors Agents, The American Society of Journalists and Authors, The Union des Écrivaines et des Écrivains Québécois, and European Visual Artists ("*Amici*") respectfully submit this Memorandum of Law in Support of their Motion for Leave to File Amici Curiae Brief in support of plaintiffs Hachette Book Group, Inc.'s, HarperCollins Publishers LLC's, John Wiley & Sons, Inc.'s, and Penguin Random House LLC's Motion for Summary Judgment. The parties have consented to the submission of this brief by *Amici*.

ARGUMENT

I. AMICI SHOULD BE GRANTED LEAVE TO FILE AN AMICI CURIAE BRIEF BECAUSE THEY REPRESENTS AUTHORS THAT HAVE A PECUNIARY INTEREST IN THIS CASE AND OFFER A PERSPECTIVE THAT CAN ASSIST THE COURT IN THIS MOTION

A motion for leave to file an amicus curiae brief falls within the "firm discretion" of the district court, as there is no governing rule or statute at the district court level. *C & A Carbone, Inc. v. Cnty. of Rockland, NY*, 2014 WL 1202699, at *3–4 (S.D.N.Y. Mar. 24, 2014) (internal citations omitted); *Lehman XS Trust, Series 2006–GP2 v. Greenpoint Mortg. Funding, Inc.*, 2014 WL 265784, at *1 (S.D.N.Y. Jan.23, 2014); *Onondaga Indian Nation v. State*, 1997 WL 369389, at *2 (N.D.N.Y. June 25, 1997). District courts in the Second Circuit often rely on principles set out by the Seventh Circuit in *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062 (7th Cir.

1997). *C & A Carbone, Inc.*, 2014 WL 1202699, at *3 (collecting cases). In *Ryan*, the Seventh Circuit reasons as follows:

An amicus brief should normally be allowed when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case (though not enough affected to entitle the amicus to intervene and become a party in the present case), or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide. Otherwise, leave to file an amicus curiae brief should be denied.

125 F.3d at 1063; *see also In re Terrorist Attacks on September 11, 2001*, 2022 WL 985336 (S.D.N.Y. March 31, 2022); *Sec. & Exch. Comm'n v. Ripple Labs, Inc.*, 2021 WL 4555352, at *5 (S.D.N.Y. Oct. 4, 2021). Amici need not be completely disinterested in the outcome of the litigation, although partiality on the part of the amici is considered. *Auto. Club of New York, Inc. v. Port Auth. of New York & New Jersey*, 2011 WL 5865296, at *2 (S.D.N.Y. Nov. 22, 2011).

Amici have a special interest in this case as they are all organizations that represent the professional interests of writers and other creators, as well as a perspective unique to the parties as fully set forth in accompanying proposed Memorandum of Law (attached hereto as Exhibit A) that can assist the Court beyond that of what counsel for the parties is able to provide. As expressed in detail in the accompanying Memorandum, the underlying issues in the instant action are complex and implicate various public interests beyond that of the adversaries hereto. *Weininger v. Castro*, 418 F.Supp.2d 553, 554-55 (S.D.N.Y. 2006). The positions advanced by *Amici* do not overlap with the factual arguments raised by the parties and will help “ensure that there has been a complete and plenary presentation of [the] difficult issues raised before this Court. *C & A Carbone, Inc.*, 2014 WL 1202699, at *3–4. Finally, Amici are not biased as the relationship at times between *Amici* and major publishing houses such as Plaintiffs can and does conflict. For the reasons stated herein, *Amici* should be granted leave to file their amicus curiae brief in support of

Plaintiffs' motion for summary judgment. The parties have consented to the submission of this brief by *Amici*.

CONCLUSION

For the foregoing reasons, *Amici*'s motion on consent for leave to file amici curiae brief in support of Plaintiffs' Motion for Summary Judgment should be granted.

Dated: August 12, 2022

Respectfully submitted,

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CERTIFICATION

The undersigned hereby certifies that the MEMORANDUM OF LAW IN SUPPORT OF MOTION ON CONSENT FOR LEAVE TO FILE AMICI CURIAE BRIEF complies with the formatting and count limit set forth in Rule II.D. of the Individual Practices Of Judge John G. Koeltl. The word count, exclusive of the caption, table of contents, table of authorities, and signature block, is 744 according to the word-processing system used to prepare the document.

Dated: August 12, 2022

s/ Robert W. Clarida
Robert W. Clarida